

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
ADMINSTRATIVE PROCEDURES DIVISION**

**CHAPTER 1240-5-2  
DEFINITIONS**

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**1240-5-2-.01    DEFINITIONS.**

- (1)    The following words and terms as used in the rules for the Appeals and Hearings Division shall have the meaning described below:
- (a)    Administrative Law Judge. An Administrative Law Judge is an impartial hearing official of the Department of Human Services' Appeals and Hearings Division or the Administrative Procedures Division of the Office of the Secretary of State who is licensed to practice law and is designated by the Commissioner to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et seq., except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9). The Administrative Law Judge shall have no direct involvement in the action under consideration prior to filing of the appeal.
- (b)    Administrative Procedures Division, Secretary of State's Office. The Administrative Procedures Division of the Office of the Secretary of State, 312 Eighth Avenue North, 8<sup>th</sup> Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243; Telephone (615) 741-7008 which provides Administrative Law Judges to adjudicate contested case hearings involving State agencies.
- (c)    Adverse Administrative Action. Determinations, procedures or omissions of the Department of Human Services affecting an appellant or person who is a party in a child support case being enforced by the Department of Human Services concerning:
- 1       The denial of an application for assistance or services;
2.      Cost sharing disputes for assistance or services;
3.      The limitation, reduction, suspension or termination of eligibility for assistance or services;
4.      Failure to act upon a request or application within required time frames; disputes regarding disenrollment from TennCare Standard or TennCare Medicaid; or
5.      The provision of child support services.
- (d)    Agency. The Tennessee Department of Human Services.
- (e)    Appeal. The process by which an appellant requests review of an adverse administrative action in accordance with procedures established in these rules.
- (f)    Appeals and Hearings Division, Department of Human Services. The Appeals and Hearings Division, Department of Human Services, P. O. Box 198996, 400 Deaderick Street, 9<sup>th</sup> Floor Citizen's Plaza Building, Nashville Tennessee 37219-8996; Telephone (615) 313-5800 and 1-866-768-1046 toll free number is responsible for processing appeals involving the assistance or

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service programs of the Department, or any other programs that have been assigned or delegated to the Department by law, regulation, or contract.

- (g) Appellant. An appellant is an individual who is dissatisfied with an adverse administrative action of the Department in regard to the furnishing or denial of assistance or services or eligibility actions by the TennCare Bureau or the provision of child support services, and who, as a result, is requesting a fair hearing before the Appeals and Hearings Division.
- (h) Applicant for Assistance. An applicant for assistance shall be the person who submits an application for assistance from an Assistance Program of the Department of Human Services or the TennCare Bureau or the person in whose behalf an application is submitted if the person submitting the application is applying for assistance for someone else.
- (i) Applicant for Services. An applicant for services shall be the person on whose behalf a service is sought from a Service Program or the Child Support Program of the Department of Human Services, even though some other person may request the service and/or may incidentally benefit from the service.
- (j) Assistance Programs. The assistance programs currently encompass Families First, Food Stamp, Mandatory Minimum State Supplement, Medicaid or TennCare under Title XIX of the Social Security Act (42 U.S.C. § 1396, et seq.) and any programs in the Adult and Community Services Division that determine eligibility for direct cash or third party vendor payments to applicants or recipients. Additional programs may be added at a later time or programs may be terminated due to legal, policy or financial considerations.
- (k) Burden of Proof.
  - 1. The “burden of proof” refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party.
  - 2. A “preponderance of the evidence” means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.
  - 3. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue.
  - 4. Generally, the party with the burden of proof presents his or her proof first at the hearing.
  - 5. The hearing official makes all decisions regarding which party has the burden of proof on any issue, and determines the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy determination of the matter at hand.
- (l) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare and Medicaid, the programs administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (m) Commissioner. The Commissioner of the Tennessee Department of Human Services.
- (n) Commissioner’s Designee.

(Rule 1240-5-2-.01, continued)

1. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for a stay or reconsideration of final orders. A Commissioner's designee may also be a hearing officer who is an impartial official of the Department of Human Services or the Department of State Administrative Procedures Division who is designated by the Commissioner to conduct contested case administrative hearing proceedings.
  2. The person so designated shall have no direct involvement in the adverse administrative action under consideration prior to the filing of the appeal.
- (o) **Contested Case.** Contested case means an administrative hearing proceeding, including a declaratory proceeding conducted pursuant to T.C.A. § 4-5-223, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by the Department after an opportunity for hearing. The Department may commence a contested case at any time with respect to a matter within its jurisdiction.
- (p) **Department.** The Tennessee Department of Human Services.
- (q) **Enrollee.** Enrollee shall mean an individual eligible for and enrolled in the TennCare Standard Program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act.
- (r) **Fair Hearing.**
1. A fair hearing is a contested case proceeding before an impartial hearing official designated by the Commissioner of the Department of Human Services (except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9) or other State or Federal law or regulation) in which an appellant or his/her representative may present his/her case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, child support office or state office is erroneous and should be corrected.
  2. A fair hearing may combine appeals of an appellant involving any programs for which the Department and the Appeals and Hearings Division may have responsibility. If necessary for the proper resolution of an appeal involving multiple programs, separate fair hearings for an appellant involving multiple program actions for a single appellant or household may be held in the discretion of the Commissioner, the Assistant Commissioner for Appeals and Hearings or their designees, or, on motion of the parties or in his/her discretion, the hearing official.
- (s) **Filing.** Unless otherwise provided by law or by these rules, "filing" means actual receipt by the entity designated to receive the required materials.
- (t) **Final Order.**
1. The final decision of the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, concerning contested case administrative hearing proceedings.
  2. An Initial Order becomes a Final Order without further notice if a timely Petition for Appeal pursuant to T.C.A. § 4-5-315, Petition for Reconsideration pursuant to T.C.A. § 4-5-317, or Petition for a Stay of Effectiveness pursuant to T.C.A. § 4-5-316 is not filed

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- with the Appeals and Hearings Division or the Administrative Procedures Division, where applicable.
3. If the Petition for Reconsideration of the Initial Order is either denied by order of the hearing official or deemed denied by law, and a petition of appeal of the Initial Order is not timely filed, the Initial Order shall become a Final Order fifteen (15) days after the entry date of the order denying the Petition for Reconsideration or the date the Petition for Reconsideration was deemed denied.
  4. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included in the Final Order.
- (u) Findings of Fact. The factual findings following the administrative hearing, enumerated in the Initial and/or Final Order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (v) Hearing Officer. A Hearing Officer is an impartial official of the Department of Human Services or the Department of State who, may be, but is not required to be licensed to practice law, and is designated by the Commissioner or his/her designated representative to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et seq., except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9). The staff member designated as Hearing Officer shall have no direct involvement in the action under consideration prior to filing of the appeal.
- (w) Hearing Official. An Administrative Law Judge or Hearing Officer.
- (x) Initial Order.
1. The decision of the hearing official following a contested case administrative hearing proceeding.
  2. The Initial Order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed.
  3. It shall include a statement of any circumstances under which the Initial Order may, without further notice, become a Final Order.
  4. An Initial Order becomes a Final Order without further notice if a timely Petition for Appeal pursuant to T.C.A. § 4-5-315, Petition for Reconsideration pursuant to T.C.A. § 4-5-317 is not filed within 15 days after the entry of the Initial Order, with the Appeals and Hearings Division or the Administrative Procedures Division, where applicable or Petition for a Stay of Effectiveness pursuant to T.C.A. § 4-5-316 is not filed.
  5. If the Petition for Reconsideration of the Initial Order is either denied by order of the hearing official or deemed denied by law, and a petition of appeal of the Initial Order is not timely filed, the Initial Order shall become a Final Order fifteen (15) days after the entry date of the order denying the Petition for Reconsideration or the date the Petition for Reconsideration was deemed denied.
  6. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included with the Initial Order.

(Rule 1240-5-2-.01, continued)

7. If an Initial Order is timely appealed, the Commissioner's designated representative shall process the appeal pursuant to Chapter 1240-5-9 of these rules.
- (y) License. A license includes the whole or part of any permit, certificate, approval, registration, charter or similar form of permission required by law to engage in a business trade or profession.
- (z) Licensing. Licensing includes the processes of the Department respecting the grant, denial, renewal, revocation, suspension, withdrawal or amendment of a license.
- (aa) Local Office.
1. A local office is the Departmental office from which the case that is being heard by the Appeals and Hearings Division originated based upon its determination of eligibility for assistance or services. It refers primarily to the county office, except Services for the Blind or Vocational Rehabilitation Services, which would be the area office.
  2. In the case of Title IV-D child support appeals, the local office refers to the local Title IV-D child support office in each judicial district operated by the Department or its contractors.
- (bb) Notice of Hearing. The document containing a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. § 4-5-307 (b).
- (cc) Party. A party means each person, entity or agency named or admitted as a participant, or properly seeking and entitled as of right to be admitted as a participant, in a contested case administrative hearing.
- (dd) Person. A person means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character, including another agency.
- (ee) Petition for Appeal. A pleading filed pursuant to T.C.A. § 4-5-315 with the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, after entry of the Initial Order stating the specific grounds upon which relief from the Initial Order is requested. If an Initial Order is subject to both a timely filed Petition for Appeal and Petition for Reconsideration, as provided in T.C.A. § 4-5-315(b), the Petition for Reconsideration is disposed of first and a new time period to file a Petition for Appeal commences as provided in State Rule 1240-5-9-.01(5).
- (ff) Petition for Judicial Review. A pleading filed with the Chancery Court appealing the contested case administrative hearing decision as provided in T.C.A. § 4-5-322 and State Rule 1240-5-10-.02.
- (gg) Petition for Reconsideration. A pleading filed pursuant to T.C.A. § 4-5-317 with the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, after entry of the Initial Order or Final Order stating the specific grounds upon which relief from the Initial Order or Final Order is requested from the hearing official who entered the Order.

(Rule 1240-5-2-.01, continued)

- (hh) **Petition for Stay of Effectiveness of Initial or Final Order.** A document seeking to have the agency suspend the effective date of a contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (ii) **Petitioner.** The petitioner in a contested case proceeding is the party who has initiated the proceedings.
- (jj) **Pleadings.** Pleadings are written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form – as, for example, a “Notice of Hearing and Charges”, “Petition for Hearing” or “Answer”. Where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (kk) **Recipient of Assistance.** The recipient of assistance shall be the person or household actually receiving assistance from an Assistance Program of the Department of Human Services.
- (ll) **Recipient of Services.** The recipient of services is the person for whose benefit services are provided by a service program of the Department of Human Services. The recipient of services for children shall be the child for whose benefit the service is being provided. The recipient of adult protective services shall be the elderly or disabled adult for whose benefit the service is provided. The recipient of rehabilitation services or services to the blind shall be the disabled individual to whom such services are directed.
- (mm) **Respondent.** The Respondent in a contested case proceeding is the party who is responding to the action brought by the “petitioner”.
- (nn) **Rule.** A rule means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements for any agency. The term includes the amendment or repeal of a prior rule, but does not include:
  - 1. Statements concerning only the internal management of an agency and not affecting private rights, privileges or procedures available to the public; or
  - 2. Declaratory rulings issued pursuant to T.C.A. § 4-5-223; or
  - 3. Intra-agency memoranda; or
  - 4. General policy statements which are substantially repetitious of existing law.
- (oo) **Services Programs.** The service programs are those in the Division of Adult and Community Services, the Rehabilitation Services Divisions and Services for the Blind or Child Support Division that provide social, protective services, rehabilitation services or child support services to individuals.
- (pp) **TennCare Standard.** TennCare Standard is that part of the TennCare Program which provides health coverage for certain Tennessee residents who meet certain eligibility requirements but who are not eligible for Medicaid under Tennessee's Title XIX State Plan for Medical Assistance and is further defined in the Rules and Regulations of Tennessee Department of Finance and Administration Bureau of TennCare at Chapter 1200-13-14.

(Rule 1240-5-2-.01, continued)

- (qq) Tennessee Rules of Civil Procedure (TRCP). The rules governing civil actions in courts of record in Tennessee or where applicable as otherwise required by statute.
- (rr) Uniform Administrative Procedures Act (UAPA or APA). The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. § 4-5-301, et seq.
- (ss) Valid Factual Dispute. A dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal.

**Authority:** T.C.A. §§ 4-5-101, 4-5-201 et seq., 4-5-301 et seq., 36-5-1001 and 1002, 71-1-105(12), 71-1-111, 71-1-132 and 71-3-151 et seq.; 7 U.S.C. §§ 2014 and 2015; 20 U.S.C. § 107b; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. § 601 et seq.; 42 U.S.C. § 651 et seq.; 42 U.S.C. § 1396; 42 C.F.R. §§ 431.210(d)(2) and 431.220(b); 34 C.F.R. § 395 et seq. and 34 C.F.R. § 361 et seq.; 7 C.F.R. § 273.15(k)(1); and 45 C.F.R. § 205.10(a)(4)(iii) and (5). **Administrative History:** Original rule filed January 19, 1977; effective February 18, 1977. Amendment filed December 17, 1982; effective March 16, 1983. Amendment filed December 17, 1982; effective April 19, 1983. Amendment filed February 26, 2007; effective May 12, 2007.